

Assembly Bill No. 2035

Passed the Assembly August 28, 2012

Chief Clerk of the Assembly

Passed the Senate August 23, 2012

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2012, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 10072 of the Welfare and Institutions Code, relating to public social services.

LEGISLATIVE COUNSEL'S DIGEST

AB 2035, Bradford. Electronic benefits transfer cards.

Existing law, administered by the State Department of Social Services, provides for the establishment of a statewide electronic benefits transfer (EBT) system for the purpose of providing financial and food assistance benefits to needy Californians. Under existing law, a recipient does not incur any loss of electronic benefits if his or her EBT card or personal identification number has been lost or stolen.

This bill additionally would provide that a recipient would not incur any loss of cash benefits that are taken by an unauthorized withdrawal, removal, or use of benefits that does not occur by the use of a physical EBT card issued to the recipient or authorized 3rd party to directly access the benefits.

By increasing duties of counties in administering public social services programs, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares as follows:

(a) State law provides relief for CalWORKs parents and recipients, to restore their benefits when stolen.

(b) However, no similar remedy exists when the benefits are delivered in electronic form, via an electronic benefits transfer

(EBT) card, and the benefits have been stolen through the practice of skimming.

(c) Countless families that depend on the basic needs grants CalWORKs provides are vulnerable to electronic crimes, and currently have nowhere to turn.

(d) Because of this inequity, a petition for writ of mandate, *Carpio v. Lightbourne* (Case No. BS135127) was filed in the Los Angeles County Superior Court in December 2011, to address a solution for families that have been victims of skimming.

(e) It is therefore the intent of the Legislature in enacting this act to address the problem of electronic theft of public benefits that is at issue in *Carpio v. Lightbourne*.

SEC. 2. Section 10072 of the Welfare and Institutions Code is amended to read:

10072. The electronic benefits transfer system required by this chapter shall be designed to do, but not be limited to, all of the following:

(a) To the extent permitted by federal law and the rules of the program providing the benefits, recipients who are required to receive their benefits using an electronic benefits transfer system shall be permitted to gain access to the benefits in any part of the state where electronic benefits transfers are accepted. All electronic benefits transfer systems in this state shall be designed to allow recipients to gain access to their benefits by using every other electronic benefits transfer system.

(b) To the maximum extent feasible, electronic benefits transfer systems shall be designed to be compatible with the electronic benefits transfer systems in other states.

(c) All reasonable measures shall be taken in order to ensure that recipients have access to electronically issued benefits through systems such as automated teller machines, point-of-sale devices, or other devices that accept electronic benefits transfer transactions. Benefits provided under Chapter 2 (commencing with Section 11200) of Part 3 shall be staggered over a period of three calendar days, unless a county requests a waiver from the department and the waiver is approved, or in cases of hardship pursuant to subdivision (l).

(d) The system shall provide for reasonable access to benefits to recipients who demonstrate an inability to use an electronic benefits transfer card or other aspect of the system because of

disability, language, lack of access, or other barrier. These alternative methods shall conform to the requirements of the Americans with Disabilities Act (42 U.S.C. Sec. 12101, et seq.), including reasonable accommodations for recipients who, because of physical or mental disabilities, are unable to operate or otherwise make effective use of the electronic benefits transfer system.

(e) The system shall permit a recipient the option to choose a personal identification number, also known as a “PIN” number, to assist the recipient to remember his or her number in order to allow access to benefits. Whenever an institution, authorized representative, or other third party not part of the recipient household or assistance unit has been issued an electronic benefits transfer card, either in lieu of, or in addition to, the recipient, the third party shall have a separate card and personal identification number. At the option of the recipient, he or she may designate whether restrictions apply to the third party’s access to the recipient’s benefits. At the option of the recipient head of household or assistance unit, the county shall provide one electronic benefits transfer card to each adult member to enable them to access benefits.

(f) The system shall have a 24-hour per day toll-free telephone hotline for the reporting of lost or stolen cards and that will provide recipients with information on how to have the card and personal identification number replaced.

(g) (1) A recipient shall not incur any loss of electronic benefits after reporting that his or her electronic benefits transfer card or personal identification number has been lost or stolen. The system shall provide for the prompt replacement of lost or stolen electronic benefits transfer cards and personal identification numbers. Electronic benefits for which the case was determined eligible and that were not withdrawn by transactions using an authorized personal identification number for the account shall also be promptly replaced.

(2) A recipient shall not incur any loss of cash benefits that are taken by an unauthorized withdrawal, removal, or use of benefits that does not occur by the use of a physical EBT card issued to the recipient or authorized third party to directly access the benefits. Benefits taken as described in this paragraph shall be promptly replaced in accordance with the protocol established by the department pursuant to paragraph (3).

(3) The State Department of Social Services shall establish a protocol for recipients to report electronic theft of cash benefits that minimizes the burden on recipients, ensures prompt replacement of benefits in order to minimize the harm to recipients, and ensures program integrity. This protocol may include the automatic replacement of benefits without the need for recipient reporting and verification.

(h) Electronic benefits transfer system consumers shall be informed on how to use electronic benefits transfer cards and how to protect them from misuse.

(i) Procedures shall be developed for error resolution.

(j) No fee shall be charged by the state, a county, or an electronic benefits processor certified by the state to retailers participating in the electronic benefits transfer system.

(k) Except for CalFresh transactions, a recipient may be charged a fee, not to exceed the amount allowed by applicable state and federal law and customarily charged to other customers, for cash withdrawal transactions that exceed four per month.

(l) A county shall exempt an individual from the three-day staggering requirement under subdivision (c) on a case-by-case basis for hardship. Hardship includes, but is not limited to, the incurrence of late charges on an individual's housing payments.

SEC. 3. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

Approved _____, 2012

Governor